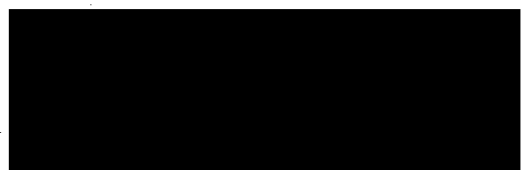




U.S. Department of Justice
Immigration and Naturalization Service

B5

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: [Redacted] Office: TEXAS SERVICE CENTER

Date: DEC 18 2000

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mark M. Ingram, Associate Commissioner
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
disclosure of information

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the petition will be remanded to the director for further action and consideration.

The petitioner is a company which offers information technology staffing services and consulting. It seeks to employ the beneficiary permanently in the United States as a software engineer pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2). As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the job offered did not require a member of the professions holding an advanced degree.

On appeal, counsel states that the director misinterpreted the minimum educational requirements for the proffered position.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a U.S. academic or professional degree or a foreign equivalent degree above the baccalaureate level. The equivalent of an advanced degree is either a U.S. baccalaureate or foreign equivalent degree followed by at least five years of progressive experience in the specialty. 8 CFR 204.5(k)(2).

The beneficiary in this matter possesses a foreign degree equivalent to a United States Master of Science in Computer Science. Consequently, he qualifies as an advanced degree professional. The issue to be determined here is whether this particular software engineer position requires a member of the professions holding an advanced degree or its equivalent. The key to this determination is found on Form ETA-750 Part A. This section of the application for alien labor certification, "Offer of Employment," describes the terms and conditions of the job offered. Blocks 14 and 15 of the ETA-750 Part A must establish that the position requires an employee with either a master's degree or a U.S. baccalaureate or foreign equivalent degree followed by at least five years of progressive experience in the specialty. 8 CFR 204.5(k)(4)(i).

The terms, "MA," "MS," "master's degree or equivalent" and "bachelor's degree with five years of progressive experience," all equate to the educational requirements of a member of the professions holding an advanced degree. The threshold for granting classification as an advanced degree professional will be satisfied when any of these terms appear in block 14.

It is also important that the ETA-750 be read as a whole. In particular, if the education requirement in block 14 includes an asterisk (*) or other footnote, the information included in the note must be included in determining whether the educational requirement, as a whole, shows that an advanced degree or the equivalent is the minimum acceptable qualification for the position.

The ETA-750 Part A contained in the record reflects the following:

- Item 14: Education – M.Sc. or equiv.* in CE, EE or Math.
Experience – 3 years in the job offered or 3 years in the related occupation of Systems Analyst.
- Item 15: VC++, MFC, COM Oracle RDBMS, Informix, SQL Server.

*B.Sc. or equiv. in CS, EE or Math plus 5 yrs exp. accepted in lieu of M.Sc. plus 3 yrs. exp.

In this matter, block 14 includes an asterisk following "Master of Science or equivalent" that refers to block 15. At block 15, it is apparent that the employer will consider a candidate with a Bachelor of Science in computer science, electrical engineering or math plus five years of experience in lieu of a Master of Science plus three years of experience. The experience required is in the job offered or as a "systems analyst." The duties of the job offered are described at block 13 of the ETA-750 as "[d]esign and develop software tools for various businesses and industries, including conducting analysis, coding, implementation and testing of software systems. Perform software consulting for clients."

As noted previously, the five years of experience in the specialty must be progressive and must be acquired after earning the baccalaureate degree. 8 CFR 204.5(k)(2). Because of the petitioner's indefinitely phrased description of the experience required to be considered equivalent of an advanced degree, it is not clear that the position requires the five years of experience to be either progressive or post-baccalaureate. Furthermore, the petitioner has not provided a description of the equivalent position of "Systems Analyst." On appeal, counsel has provided no explanation of the minimum required experience. Consequently, it cannot be found that this position, at a minimum, requires a professional holding an advanced degree or its equivalent.

However, in accordance with the court order in Chintakuntla v. U.S. Immigration & Naturalization Serv., No. C 99-5211MMC (N.D. Cal. May 4, 2000), this petition must be adjudicated in compliance with the Service policy memorandum of March 20, 2000, "Educational and Experience Requirements for Employment-Based Second Preference (EB-2) Immigrants." The Memorandum states that when the terms of the ETA-750 are unclear, the petitioner must be afforded an opportunity to provide a supplemental statement clarifying whether the position requires five years of progressive, post-baccalaureate experience in the specialty.

For this reason, the decision of the director will be withdrawn and the petition will be remanded for further action and consideration. The director must afford the petitioner reasonable time to provide the supplemental statement described above. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements and the Service policy memorandum of March 20, 2000.

ORDER: The director's decision of December 20, 1999 is withdrawn. The petition is remanded to the director for entry of a new decision in accordance with the foregoing which, if adverse to the petitioner, is to be certified to the Associate Commissioner, Examinations, for review.